

STATEMENT OF
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ASSOCIATION

ON THE

REAUTHORIZATION OF THE MAGNUSON-STEVENSON ACT

BEFORE THE

SENATE COMMERCE COMMITTEE'S SUBCOMMITTEE ON OCEANS AND

FISHERIES

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Statement before the
Senate Commerce Committee's
Subcommittee on Oceans and Fisheries

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Madam Chair, my name is Richard Ruais and I am the Executive Director of the East Coast Tuna Association. Before joining East Coast Tuna in 1991, I was the Deputy Executive Director of the New England Fishery Management Council having worked for the Council since 1978. East Coast Tuna represents over 400 giant bluefin tuna fishermen (over 100 from the fine State of Maine), fish dealer small businesses, and associated support industry businesses all with a common interest in the long term conservation and proper management of this valuable highly migratory, and internationally shared resource. Our members catch and export the bulk of the U.S. quota of Atlantic bluefin tuna (ABT) contributing in a significant way to the total ex-vessel value of our highly migratory species landings which easily exceeds \$100 million annually.

I Sincerely appreciate today's opportunity to share with this Committee our views regarding very important changes necessary to fine tune the Magnuson-Stevens Act and to improve the continuing process for international conservation and domestic management of Atlantic bluefin tuna and other highly migratory species.

Atlantic Bluefin Tuna Research

I would like to start by reminding the Committee of a major conclusion of the National Academy of Sciences' independent review of the Atlantic bluefin tuna situation in September of 1994. The Academy's conclusion, which I believe is even more relevant during this millennial eve, is that:

"research on the biology of Atlantic bluefin tuna is not continuing at an intensity necessary to answer major biological questions pertaining to the management of the fisheries."

Obviously, this deplorable situation (despite the 1995 amendment to the Atlantic Tunas Convention Act mandating an Atlantic bluefin tuna "comprehensive research and monitoring program") continues to be a great source of anxiety and frustration/or the many thousands of individuals whose livelihoods depend on the fishery. The reality is that we have a very intense rebuilding plan on those migrating ABT assemblages that make a short seasonal visit to certain western Atlantic waters and fishing grounds. This rebuilding plan requires tremendous sacrifices on the part of all U.S. commercial and recreational fishermen as all groups labor under a paltry catch limit totaling less than 1,400 metric tons. But this plan is based on a "two-stock working hypothesis" With an assumption of limited stock mixing and an arbitrary boundary line in the middle of the ocean that migrating fish do not respect and that everyone knows is fiat out wrong. Recent results from two years of pop-up satellite tag studies conducted by the New England Aquarium reveal that at least 30% of the, SAT tagged here in the Gulf of Maine cross the boundary line to eastern fishing grounds where unrestricted catches have exceeded 46,000 metric tons as recently as 1996.

The continuing lack of adequate scientific knowledge on ABT stock structure, migration patterns, spawning areas, sexual maturity parameters, maximum sustainable yield levels and other critical parameters necessary for effective, efficient and reliable conservation programs directly jeopardizes the long term, expensive

conservation

sacrifices of U. S. fishermen. This is why the support and leadership of Members of this Subcommittee in

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,~securing substantial federal funds for independent scientific research at the New England Aquarium continues to be of critical importance to Maine fishermen and all involved in the management and conservation of ABT.

Changes Required to the Sustainable Fisheries Act

On January 28, 1998 several members of this Committee co-authored a letter to NOAA's Terry Garcia clarifying Congressional intent with respect to critical Agency misinterpretations regarding the definition of overfishing and realistic targets and considerations relative to MSY as a biological objective for most stocks including highly migratory species and relative to species associated with mixed stock fisheries. This Congressional clarification also strongly advised NMFS that there was no basis for any interpretation of the Sustainable Fisheries Act implying that the 10 year benchmark for rebuilding was an absolute mandate for total fishery shutdowns.

My organization supports the January 28 legislative clarifications on these critical issues and within the accompanying 6 pages of detailed staff analysis. We strongly urge the Committee to now amend the Magnuson-Stevens Act in all necessary areas to eliminate any possibility of Agency future misinterpretation regarding the existence within the statute of the necessary flexibility to rebuild fisheries in a practical fashion taking into account social and economic needs We suggest that some modification to the SFA's new National Standard **8 identifying a higher priority consideration of this national standard could substantially serve the purpose of eliminating current and future misinterpretation regarding the importance of flexibility in determining the rebuilding time frames.**

addition. 1 would like • to call the Committee's attention to the criteria in Section 304(e)(4)(A)(i)(ii) which „early was intended to allow for the establishment of rebuilding plans and time frames for shared, highly migratory stocks by competent international organizations and authorities. Our concerns here are identical to those expressed by U.S. ICCAT Commissioner Glenn Delaney in his testimony to the Committee in August regarding the need. to prevent interpretations that our domestic SFA could support or require attempts to force a "tail wagging the dog scenario", which would no doubt be counterproductive in the ICCAT setting.

Congressional recognition of the need for international efforts to conserve highly migratory species in the Atlantic Ocean has been a reality at least since the early 1970's with U.S. ratification of the ICCAT treaty. This recognition has been based on the fact that U. S catches and the resulting fishing mortality exerted on these species is almost insignificant (usually less than 5% of the total catch) in relation to the total Atlantic wide catch and mortality exerted by other coastal and high seas fishing nations. The U.S. cannot conserve these fish unilaterally and we are not in a position to dictate rebuilding objectives, strategies or rebuilding time periods to the multitude of nations involved in the international processes. ICCAT alone has 27 nations involved in the scientific and political processes required for development of continuing conservation agreements.

Given these facts and the existing international framework for managing these fisheries, the 10 year SFA rebuilding period benchmark is only useful for guiding initial U. S objectives within the international negotiating

arena. Despite the clear Congressional intent and recognition of the process involved in conserving internationally shared species, the NMFS and ABT recreational and commercial industries are currently being harassed into a costly defense of the newly implemented ICCAT 20 year rebuilding plan for ABT. The National Audubon Society has initiated a lawsuit challenging the U.S. implementation of the ICCAT 20 year ABT rebuilding plan which results in highly restrictive quotas and size limits on all U.S. fishermen. We urge the
)Committee to consider a specific clarification to SFA unequivocally acknowledging that recovery **time**

.Periods for highly migratory fish should be established by the competent international organization. Further, we ask the Committee to consider other changes necessary to prevent nuisance challenges & bona fide international recovery plans

We also enthusiastically support Commissioner Delaney's suggested changes to Magnuson-Stevens regarding establishment of process linkage between "commissioner intent" in developing ICCAT international agreements and the corresponding domestic program implementation. My organization has been directly impacted by the failure of the existing domestic process to capture the intent of the latest ABT international quota agreement as it relates to the equitable sharing of a modest 43 metric ton increase in the U.S. quota. Commissioner Delaney's suggested changes could avoid much future unnecessary litigation, time consuming corrective regulatory framework actions and formal HMS ~ amendments and allow more efficient operations and use of the HMS Advisory Panel and NMFS I-t-S Division staff capabilities.

Madam Chair, there is no question that the Sustainable Fisheries Act was a landmark statute and initiated a dramatic turning point in this Nation's efforts to reverse the serious problems and impacts stemming from overfishing. NMFS has recently testified that substantial progress has already been made nationwide with the submission and implementation of numerous rebuilding plans since passage of the SFA mandates. In addition, here in New England recent stock assessments on groundfish and sea scallops are showing very promising signs. This is all encouraging news and the existence of the SFA virtually guarantees that the job of rebuilding our fisheries will get done and that a return to the failed management policies of the 1970's will not take place.

However, we want to caution the Committee, as these hearings and M-S re. authorization progress, to adopt a

Healthy suspicion about suggested changes to eliminate flexibility for the regional councils and NMFS. In effect denying adequate time for stock restoration and industry, adjustment to the increased fishing restrictions and decreased revenues. Whether the advice comes from radical environmental group leaders or retired Gloucester, MA party boat captains, the Committee should resist the entreaties of those willing to make the so-called tough decisions to "bite the bullet" for others who must make the resulting serious and or catastrophic economic sacrifices.

The simplistic view that the benefits of stock restoration will come sooner and be greater by "complete shutdowns" or "drastic quota cuts" is, in most cases, naive at best and certainly irresponsible and reckless towards those dependent on our fisheries for survival. Often, the effect of draconian reductions is to the long term benefit of those most immediately responsible for declines (and thus better healed to wait out the restrictions) while drastic actions typically eliminates those least responsible for the declines, effectively denying them any opportunity to share in future benefits from sacrifices already made.

We believe that any rigid maximum time limit for stock recovery is arbitrary, unnecessary and represents bad policy. Once action has been established preventing further depletion of an overfished stock and fishing is occurring at a sustainable level, management timing of ultimate stock recovery involves primarily economic and social issues (assuming a cooperative ecosystem). We believe that it is unconscionable to require a single human tragedy (e.g. elimination from fishery, lost vessel, home, college education, etc.) in the interest of an arbitrary time limit for a stock that is in a sustainable condition. Rate of recovery of a stock of fish and timing of ultimate total recovery to an MSY or other

target goal should never take precedence over human impacts.

We want to offer the Committee some additional thoughts on maximum sustainable yield as a management goal. The fact that most people have little difficulty grasping the concept of an MSY as a goal makes it both attractive

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and useful, to a degree. However, unless certain difficulties with the concept are not taken into account, using MSY as a goal and a standard can cause some serious problems.

MSY for any fishery is a mathematical construction, not an invariant, measurable natural quantity. Most scientists understand this and try to provide some idea of the range of uncertainty in where MSY lies based on their determination of the uncertainties in the data that are used to estimate MSY. But this type of modeling in fisheries as in weather forecasting is subject to more factors than presently are practical to model. As a result, projection for population trends in a fishery are subject to the same degree of uncertainty as is a model predicting where and when a hurricane will make landfall.

There are two main problems with estimating MSY. One is the problem of collecting good data and the other is the fact that the yield in a fishery is subject to environmental variables. To a certain extent this can be dealt with by defining MSY as an average yield over time, subject to changing environmental conditions. What is not considered when estimating MSY, at least not explicitly, is that almost all fisheries are species specific. Therefore MSY is calculated as though the only factors of importance are the catch and effort data from the fishery and some sort of mathematical representation of a spawner-recruit relation that recognizes that recruitment may vary, from year to year due to environmental variability. These results ignore a whole range of other factors that affect the yield a fishery can be expected to sustain.

Our main interest, as you are aware, is with the management of Atlantic bluefin tuna. Therefore, although we will draw upon this species as an example, please bear in mind that the same sorts of complex interactions apply to many other fisheries as well. Also keep in mind that MSY for ABT in the western Atlantic is highly controversial. With diverse estimates ranging from 2,800 metric tons to as high as 13,000 metric tons depending on the scientist and models employed.

The mature bluefin is a large predator that probably is safe from most predators except people. Size does matter. However, getting to that size is not easy. Tunas produce a large number of very small pelagic eggs, which hatch into larvae that develop into juvenile tuna an inch or so long over the course of a few months. More than 99.9% of these eggs will not become juveniles because the eggs fail to hatch, are eaten, the larvae die because they cannot find food in their first few days of life, or they are eaten, or die due to unfavorable environmental conditions. Another very large percentage of the tunas that do survive to become juveniles will die before they reach the age of one year, either through predation or starvation. And the modelers predict that two thirds of those that do survive to age one will die before they reach maturity. All this is in the absence of any mortality due to fishing.

In nature, for tuna and for most fish, the greatest mortality occurs in the first few weeks of life. During this time man plays a minor direct role in their survival. Exceptions occur through habitat loss or degradation and pollution. Indirectly, however, man plays a major, but difficult to quantify, role in survival. This role can be both positive and negative. On the plus side fisheries for other species such as filterfeeding sardines, menhaden and herring may enhance survival of the eggs, larvae and juveniles. The destruction of marine birds and their

nesting sites may reduce juvenile mortality, and fisheries for other predators such as billfishes, sharks and small cetaceans that prey on tunas or compete with them for food may result in a decrease in natural mortality for larger tunas. On the minus side, habitat loss, pollution and fisheries on forage species may reduce the food available for the tuna and increase natural mortality, or retard growth and reduce spawning ability

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...early, these interactions are too complex to hope to understand them or model them in any meaningful way. But some are potentially so great that for certain species they clearly need to be considered when devising rebuilding plans and setting targets. In the case of bluefin for example, there is more than theoretical reason to believe that the reduction in forage species such as sea herring, butterfish and squid will affect availability of the fish on traditional grounds such as the Gulf of Maine and southern New England and the northeast Atlantic.

These kinds of interrelations should be a concern in the management of all exploited species of marine resources. None of our resources are unexploited. Whatever equilibrium, if there was one, that might have existed three centuries ago no longer exists. It is impractical to believe we can go back to **MSY** for all US fisheries in any reasonable time period. For one thing the data base we have available to estimate MSY is from a time when some species were already well below MSY. Thus the estimate of MSY is likely to represent some other equilibrium level than "true" MSY. Also, one needs to consider if it is practical and possible to set MSY goals for all our fisheries without allowing for the interspecific interactions. For example, how will taking MSY for Georges Bank herring affect the MSY for Atlantic bluefin tuna, whales, and bluefish? What will happen to lobster production if halibut rebuild to MSY? What will the impact on cod and haddock recovery be if a new spiny dogfish plan increases the abundance of these voracious predators of juvenile groundfish?

We realize that these comments are not particularly helpful in an immediate sense, but we hope that this **concept of species interaction and the improbability of simultaneous MSY achievement** for interrelated stocks can be expanded in the upcoming legislation. It may be that further thought should be given to de-emphasizing MSY as the goal and working instead to develop optimum yields that reflect more than maximizing the yield from single species fisheries.

Unfortunately it may not be possible to use this approach for the highly migratory species that are currently subject to some sort of international management treaty. For example with ICCAT the management goal is MSY in the strict sense. But this does not mean that the assessments cannot consider the possibility that MSY can change because of extraneous factors including fisheries for other species, major regime shifts, etc. that are outside the purview of ICCAT.

Our last point on the subject of MSY or any other target to define overfishing or to serve as a rebuilding goal is to point out that there is a remarkable lack of accountability on the part of NMFS and serious lack of independent peer review in the assessment process. This lack of accountability produces frustration and a sense of helplessness for fishermen who can believe strongly that the science on which the regulations are predicated is flawed. These situations are not isolated events now or in the future. In 1997 the National Academy of Sciences concluded that NMFS stock assessments are likely to be wrong 25% of the time. This may account in part for the recent plethora of lawsuits against the agency.

We suggest that the Committee address this issue of lack of accountability and peer review in the NMFS stock assessment process by considering a two part amendment:

t.) a scientific and management oversight provision/mechanism that requires a continuing review of the type, amount and quality of data that will be used in the assessment process. We suggest that this should include a directive to NMFS to form an industry-agency cooperative to collect and examine data; and

2.) a review provision that provides for independent arbitration in the case of disputes involving the science of NMFS stock assessments with the arbitrator having the discretionary authority to call for a

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...renal review by the National Review Council (or other non-NMFS competent and neutral scientific organization) in cases where the disputes cannot be resolved by other roerms.

Firudly, we have a number of additional specific administrative suggestions to improve continuing HMS nuuuisement as it is evolving under unique Secretarial authoriT and with assistance from the ICCAT Advisory Committee and domestic HMS Advisory Panel. Some of these changes may also require technical amendments to the Atlantic Tunas Convention Act and other legislation as the case may be.

A. Compensation for the ICCAT Commercial and Recreational Commissioners

We believe that the time, effort and responsibilities of the ICCAT Commissioners has seriously increased over the last several years as the management responsibilities and international negotiating efforts in pursuit of international rebuilding plans have intensified for most highly migratory species. Clearly, the role these individuals assume and their responsibilities as Presidential appointees warrant compensation for the considerable time and extended overseas and domestic travel required to carry out their duties. We believe that compensation at least equal to that of regional council members or equivalent to the daily rate paid the federal ICCAT Commissioner is appropriate.

We believe that consideration should also be given to compensating the ICCAT Advisory Committee Chairman as well given the expanded role and duties in recent years.

Extension of Commissioner Service to 3 Consecutive Terms Consistent with Council System

We believe that the terms of the ICCAT Commercial and Recreational Commissioners should be extended from the current maximum of 2 to 3 consecutive 3 year terms as is the existing case for regional fishery council members. We note, in particular, that with respect to the foreign delegations at ICCAT there appears to be no such term limits in ,effect and that such continuity in the delegations can offer strategic advantages at the negotiating table. The rebuilding plans for most highly migratory species are likely to be longer than most domestic fisheries and there are obvious benefits from having institutional memory and continuity at the Commissioner level during the process of continuing refinement of conservation agreements.

C Establish a Waiver of Conflict of Interests under 18 U.S.C. 208 for Commissioners

The number of individuals with experience, qualifications and expertise to carry out the responsibilities and duties of ICCAT Commissioners for the private sector are limited. Typically, many of the potential candidates will be active in the fishery or otherwise have a direct financial interest in the affected industry. To adequately represent thc interests of the fisheries requires a substantial direct knowledge of the fisheries and a continuing commitment of time beyond that required for official meetings. Anyone with the requisite' knowledge and experience would almost certainly be active in the fishery or have a direct interest in the fishery. The same holds true for council members and that is why Magnuson-Stevens Act provides an exemption from the Section 208

conflict of interest law. Commissioners should be treated in the same fashion as regional council members.